Memorandum of Understanding Between a State Agency and Other Governmental Body or Political Subdivision Terms and Conditions

I. Scope of Services

This Memorandum of Understanding ("MOU" or "Agreement") is entered into, by and between the Commonwealth of Kentucky, Justice and Public Safety Cabinet, Department of Corrections ("the Commonwealth" or "DOC") and Jefferson Community & Technical College ("the Contractor") to establish an agreement for educational services at DOC institutions. The initial MOU is effective from August 1, 2022, through June 30, 2024.

II. Definitions

For the purposes of this Agreement, the definitions listed in this section shall represent the common and exclusive understanding of the parties hereto. The singular and plural form, as well as the small or upper case, of any defined term can be used interchangeably regardless of whether the definition refers to the singular or plural term, or uses the small or upper case, and pronouns shall be deemed to include all genders.

1. "Contractor" means the person or entity identified as the Contractor in the Scope of Services section of this MOU.
   1.1. The Contractor is a fiscal agent acting pursuant to a personal service contract with the Commonwealth of Kentucky, Education and Workforce Development Cabinet, Office of Adult Education.
2. "Contractor employee" means an agent, employee, contractor, subcontractor, vendor, or any other individual or entity acting on behalf of the Contractor that provides educational services pursuant to this agreement.
3. "Course" or "Class" means a course of education or training conducted by contractor pursuant to this Agreement.
4. "DOC PREA standards" all Department of Corrections policies related to PREA.
5. "Educational services" means general education classes, courses, programs, instruction, tutoring, testing, or remediation.
   5.1. This definition shall include the following:
      5.1.1. Adult education and literacy activities;
      5.1.2. Secondary school credit;
      5.1.3. Integrated education and training;
      5.1.4. Career pathways;
      5.1.5. Concurrent enrollment;
      5.1.6. Peer tutoring;
      5.1.7. English language acquisition;
      5.1.8. Transition to reentry initiatives and other post-release series with the goal of reducing recidivism; and
      5.1.9. TABE testing.
6. "Institution" means any institution or facility under the control of DOC.
7. "Institutional lockout" means a Contractor employee is prohibited by DOC from entering an institution, or any other DOC property, due to alleged, or substantiated, misconduct.
   7.1. Misconduct shall include commission of a misdemeanor or felony, violation of DOC safety and facilities management policies, testing positive on a drug test, and/or refusal to comply with the

III. Department of Corrections Terms and Conditions

A. The Commonwealth shall

1. Be responsible for management of all DOC educational courses.
   1.1. DOC shall provide classroom space and supplies.
2. Notify the Contractor of any claims or potential litigation that involves Contractor employees, in writing within five (5) business days of receipt of notice or summons.
3. Have authority to require Contractor employees to comply with DOC institutional safety and facilities management policies and procedures.
   3.1. Contractor employees will be subject to security checks when they enter and exit an institution.
4. Be responsible for the processing and handling of inmate-initiated civil complaints.
5. Be responsible for the processing and handling of complaints initiated by DOC employees.
6. In the event of an institutional lockout, provide to the Contractor, upon request, all relevant investigative information regarding Contractor employees, to the extent permitted by law.
7. Assign classroom/office keys to Contractor employees.
   7.1. Keys will remain stored at the institution's Central Control and will be checked-out and returned by Contractor employees to Central Control daily.
8. Ensure the random nature, integrity, and security of drug tests administered to Contractor employees.
   8.1. DOC will provide the test, and pay the test fee, if the test is administered at a DOC facility by DOC's vendor.
   8.2. Tests based on reasonable suspicion of drug or alcohol impairment are not required to be random.
9. Ensure that educational courses in an institution shall operate on a 12-month basis.
   9.1. DOC agrees that Contractor employees will follow the Contractor's calendar for all holidays.
10. Not allow or authorize Commonwealth personnel to conduct performance evaluations of Contractor employees.
11. Not be responsible for reimbursing the Contractor for services rendered, or expenses incurred, pursuant to this agreement.

B. The Commonwealth may

1. Upon request of the Contractor, provide input to assist the Contractor in preparing the employee performance evaluation of Contractor employees.
2. Reserve the right to institute, and continue, an institutional lockout of a Contractor employee, regardless of the outcome of any investigation of, or disciplinary action concerning, that Contractor employee.
3. Provide professional development training opportunities for Contractor employees.
4. Permit Contractor employees to use data storage devices such as flash drives, providing the data storage devices are inspected and documented by DOC security and DOC information technology personnel daily.
   4.1. All DOC-related records and information stored on such devices and drives remain DOC records and are subject to DOC policies and procedures regarding use, transfer, or dissemination, of such records.

C. The Contractor shall

1. Provide educational services to students.
2. Assign employees with the necessary qualifications and licenses to provide educational services.
3. Maintain the payroll and other related expenses pertaining to Contractor employees.
4. Reimburse Contractor employees for all incurred eligible expenses.
5. Comply with PREA and all applicable PREA National Standards.
6. Comply with all DOC PREA policies.
7. Comply with DOC institutional safety and facilities management policies and procedures.

8. Ensure that Contractor employees comply with the applicable terms of this MOU.
9. Ensure that Contractor employees comply with the Contractor's personnel procedures.
10. Ensure that only classes approved by DOC will be taught to students, as well as those students electing to transfer to DOC comparable classes, if available.
11. Ensure that Contractor employees who may have contact with inmates shall be subject to DOC's policies requiring background investigations for contractors and shall not be allowed to have contact with inmates unless they have passed a DOC background investigation within the last five years.
12. Ensure Contractor employees attend annual corrections training and professional education training.
13. Ensure that Contractor employees participate in the DOC drug-testing program and be subject to random tests as well as tests based on reasonable suspicion of drug or alcohol impairment.
    13.1. Contractor will supply to DOC the Contractor Employee ID numbers of all Contractor employees to accommodate the random selection of test subjects.
    13.2. Contractor employees who refuse to comply with the drug-testing program will be subject to progressive disciplinary action by the Contractor.
    13.3. Contractor employees who test positive on a drug or alcohol impairment test, or refuse to comply with the drug-testing program will be escorted off institution premises and be subject to institutional lockout.
    13.4. Contractor employees who test positive on a drug test will be subject to Contractor progressive disciplinary action.
14. Notify DOC of any claim or potential litigation that involves DOC personnel, in writing within five (5) business days of receipt of notice or summons.
15. Ensure Contractor employees have and maintain the appropriate and required accreditations and licenses to provide educational services.
16. Not allow or authorize Contractor employees to conduct performance evaluations of Commonwealth personnel.
17. Ensure that Contractor employees seek reimbursement for eligible expenses from the Contractor, rather than the Commonwealth.
18. In a manner consistent with its policies and procedures, oversee the appeal or complaint resolution process of complaints and grievances initiated by Contractor employees.
19. Ensure that it obtains and maintains in effect, all required permits, licenses, and insurance.
20. Within five (5) business days of the request, provide a copy of the personal service contract, or any other agreement, between the Contractor and the Commonwealth of Kentucky, Education and Workforce Development Cabinet, Office of Adult Education.
21. Not seek reimbursement from the Commonwealth for services rendered, or expenses incurred, pursuant to this agreement.

D. The Contractor may

1. Request DOC input for purposes of preparing the employee performance evaluation of Contractor employees.
2. In the event of an institutional lockout, request from DOC all relevant investigative documentation.
    2.1. This documentation may be utilized by Contractor for purposes of progressive discipline.

IV. Justice and Public Safety Cabinet Terms and Conditions

1. Contractor shall comply at all times with all applicable federal, state, and local laws, regulations, executive orders, and attorney general opinions.
2. Contractor shall comply with all applicable Commonwealth of Kentucky Executive Department policies and procedures, and Commonwealth Office of Technology policies and procedures.
3. The Contractor shall report any and all acts and omissions constituting a violation of applicable federal

condition; (4) the Contractor's publication, translation, reproduction, delivery, performance, use, or disposition, of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes (5) the Contractor's employment practices during the term of this Agreement; and (6) any failure of the Contractor, its officers, or employees to observe federal, state, and local laws, including but not limited to labor laws and minimum wage laws.

5. Both parties, including any subcontractors or agents of each, agree to comply with all applicable state and federal confidentiality laws, including the Family Educational Rights and Privacy Act and the Health Insurance Portability and Accountability Act, and to protect the security, confidentiality, and integrity of education and health information. The Contractor acknowledges and agrees that the Commonwealth shall be entitled, without waiving any other rights or remedies, to injunctive or equitable relief to enforce the requirements of this provision of this Agreement.
6. Vendors and other state agencies that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. ("the Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set for in the Act.
   - 6.1. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one(1) or more of the following data elements:
     - 6.1.1. An account, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;
     - 6.1.2. A Social Security number;
     - 6.1.3. A taxpayer identification number that incorporates a Social Security number;
     - 6.1.4. A driver's license number, state identification card number, or other individual identification number issued by an agency;
     - 6.1.5. A passport number or other identification number issued by the United States government; or
     - 6.1.6. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec. 1232g.
   - 6.2. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects, or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
   - 6.3. The Contractor agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
   - 6.4. The Contractor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the Commonwealth, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology, of a determination of, or knowledge of, a breach, unless the exception set forth in KRS 61.932(2) applies and the Contractor abides by the requirements set for in that exception. Notification shall be in writing on a form developed by the Commonwealth Office of Technology
   - 6.5. The Contractor agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
   - 6.6. Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the Contractor agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.
   - 6.7. In accordance with KRS 61.932(2)(a), the Contractor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and

8. The Contractor shall ensure that any and all access to Commonwealth data by Contractor personnel is limited to only those Contractor personnel with a necessary and essential purpose to fulfill the terms and conditions within this Agreement.
9. The Contractor shall not utilize Commonwealth data for the Contractor's benefit except as contemplated within and pursuant to the terms and conditions of this Agreement. The Contractor shall not sell or resell any and all Commonwealth data.
10. The Contractor shall ensure that any and all data transmitted and received on behalf of and as directed by the Commonwealth is transmitted and received only via secure methods and protocols.
11. Upon the expiration of the term of this Agreement, unless it is renewed prior to its expiration, the Contractor shall either: (1) return any and all data provided by the Commonwealth, destroy any and all copies of the data in whatever form they occur, complete the attached Data Destruction Certification, and submit the certificate to the Commonwealth no less than 7 calendar days after expiration of this Agreement; (2) destroy the data, including any and all copies of the data in whatever form they occur, without returning the data to the Commonwealth, complete the attached Data Destruction Certification, and submit the certificate to the Commonwealth no less than 7 calendar days after expiration of this Agreement; or (3) retain the data subject to the terms of this Agreement regarding data ownership, privacy, and breach. The Commonwealth retains discretion to choose the option Contractor shall perform. In the event that the Commonwealth has not communicated to the Contractor which option should be followed, the Contractor shall perform the actions listed in option (1).
12. The parties agree that they receive all information communicated between them before the execution of this Agreement in strict confidence and that the receiving party, its agents, or employees shall not, without prior written consent of the other party, disclose any such information, subject to Commonwealth of Kentucky and federal disclosure laws.
13. The Contractor shall not represent that a working copy, draft, or the finalized version of this Agreement is identical to a previous iteration of this Agreement if the Contractor has made edits since the last iteration. The Contractor shall clearly present all edits, either through editing functions in word processing software, or as a list provided contemporaneously with the most recently edited iteration.
14. During the term of this Agreement, Contractor shall be authorized in its sole discretion to discipline, terminate, or take any other personnel action against Contractor personnel. Upon communication by Commonwealth of an issue with Contractor personnel, Contractor shall have the sole authority to take action to effect a solution.
15. In no event shall any person or entity be deemed to be a third-party beneficiary of this Agreement.
16. The Contractor acknowledges that the Commonwealth may execute agreements with other vendors for additional or related goods and services that address, interact with, or otherwise regard this Agreement. The Contractor shall fully cooperate with such other vendors and vendor personnel, agents, and designees. The Contractor shall not commit any act; allow any omission; or permit its personnel, agents, or designees to commit any act or allow any omission that will interfere with the performance of work by any other vendor or any other vendor's personnel, agents, or designees.
17. Each party shall provide a contact to resolve any and all issues related to this Agreement and promptly update the contact information as necessary.
18. All notices under this Agreement shall be given in writing. Electronic mail constitutes a writing.
19. No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
20. No party shall assign its respective rights or obligations under this Agreement without prior written consent of the other party. Any purported assignment or delegation in violation of this Agreement is void.
21. The terms and conditions of this Agreement may only be amended by mutual written consent of both

25. If any term or provision or any part of this Agreement is declared invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the law.
26. This Agreement is the final and exclusive agreement between the parties. All prior negotiations and agreements are superseded by this Agreement.
27. Nothing in this Agreement shall be deemed to waive, or otherwise limit, the rights, privileges, immunities, including sovereign immunity granted under Kentucky Constitution §§ 230 & 231 and the United States Constitution Eleventh Amendment, and matters of defense now available or hereafter made available to the Commonwealth and/or its officers and employees.

[*Signature page follows*]

APPROVALS

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Commonwealth

Signature | Title: Deputy Commissioner

Hilarye Dailey | 8/23/22

Printed Name | Date

Contractor

Signature | Title: VP of Administration and CFO

Gary Dryden | 6/27/2022

Printed Name | Date

Approved as to form and legality

Attorney